



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/639,074	08/12/2003	Jeffrey A. Olson	6566.US.D2	6942
23492	7590	05/03/2005	EXAMINER	
ROBERT DEBERARDINE ABBOTT LABORATORIES 100 ABBOTT PARK ROAD DEPT. 377/AP6A ABBOTT PARK, IL 60064-6008			YUN, JURIE	
			ART UNIT	PAPER NUMBER
			2882	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/639,074

Applicant(s)

OLSON ET AL.

Examiner

Jurie Yun

Art Unit

2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/16/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The preliminary amendment filed 8/12/03 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 38 and 40 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. It is unclear what the structural limitations are conveyed by "suitable" and "capable of". The term "for moving" is intended use; "a crystal holder" is not positively recited.

4. Claim 39 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not known how air can escape from a device in which it is not established that air is kept from escaping in the first place.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (USPN 4,770,593) and further in view of Hall (USPN 3,860,815).
7. With respect to claims 38-41, Anderson discloses a device (26) suitable for moving a crystal holder (Fig. 2, 30) from a storage cell (22) to a positioning device (18),

Art Unit: 2882

said moving device comprising an elongated element having a first end and a second end, said first end capable of being linked to a robot, said second end capable of being coupled to said crystal holder (column 5, lines 59-66).

Anderson discloses all of the elements but does not disclose the device capable of maintaining a crystal in the crystal holder at a temperature no higher than about 160 degrees Kelvin when the second end is coupled to said crystal holder. Hall discloses the importance of temperature control in an X-ray diffractometer and means for temperature control (abstract). Although Hall does not disclose the temperature limit, Hall discloses maintaining the crystal samples at temperatures near that of liquid nitrogen (column 2, lines 63+). Applicant discloses (page 1, lines 23-26), "In addition, to ensure the integrity of crystals, the crystals must be stored under liquid nitrogen and maintained at temperatures near that of liquid nitrogen during the entire mounting, aligning, and data collecting processes." It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Anderson device to maintain a crystal in the crystal holder at a temperature no higher than about 160 degrees Kelvin, because crystals must be maintained at this temperature range in X-ray diffractometry, as taught by Hall.

Anderson does not disclose the device capable of shielding the crystal holder from ambient air when the second end is coupled to the crystal holder. Hall teaches (column 2, lines 67+) problems can occur as the cooling fluid exits from the cooling means and comes in contact with the ambient atmosphere. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the

Art Unit: 2882

teaching of Hall and have the Anderson device capable of shielding the crystal holder from ambient air to prevent possible frosting of the crystal sample. It would have been obvious to one of ordinary skill in the art to also provide a vent to allow air to escape from the device to prevent the device from exploding.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jurie Yun whose telephone number is 571 272-2497.

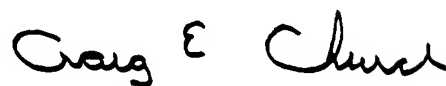
The examiner can normally be reached on Monday-Friday 8:30-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on 571 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jurie Yun
April 29, 2005



Craig E. Church
Primary Examiner